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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
5

6 GINA GARCIA NAVARRETE,
7 Plaintiff,
8 v.
9 DR. STEPHEN H. MILLER,
10 Defendant.

Case No.: 2:19-cv-00504-RFB-NJK

ORDER

[Docket No. 1]

11 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to
12 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a
13 Complaint. Docket No. 1-1.

14 **I. *In Forma Pauperis* Application**

15 Plaintiff has submitted the affidavit required by § 1915(a). Docket No. 1. Plaintiff has
16 shown an inability to prepay fees and costs or give security for them. Accordingly, the request
17 to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office
18 is further **INSTRUCTED** to file the complaint on the docket. The Court will now review
19 Plaintiff's Complaint.

20 **II. Screening Complaint**

21 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
22 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
23 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
24 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
25 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
26 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
27 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
28 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
2 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
3 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
4 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
5 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
6 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
7 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
8 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
9 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
10 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
11 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
12 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
13 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
14 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
15 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
16 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

17 **A. Federal Question Jurisdiction**

18 Federal courts are courts of limited jurisdiction and possess only that power authorized by
19 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28 U.S.C.
20 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
21 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
22 federal law creates the cause of action or where the vindication of a right under state law
23 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
24 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal question jurisdiction exists is based on the
25 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a federal
26 question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc.*
27 *v. Williams*, 482 U.S. 386, 392 (1987). Plaintiff has not identified any federal law under which
28 she seeks to proceed. Accordingly, federal question jurisdiction does not exist.

1 **B. Diversity Jurisdiction**

2 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil
3 actions in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000”
4 and where the matter is between “citizens of different states.” Plaintiff’s Complaint fails to allege
5 an amount for damages; however, in one of her attachments, she appears to suggest that she seeks
6 damages of \$2,000. Docket No. 1-1 at 19.¹ Accordingly, the Court finds that Plaintiff has not
7 established diversity jurisdiction.

8 **C. Allegations in Complaint**

9 Here, Plaintiff has made the conclusory allegations that a botox injection she received at
10 Defendant Miller’s clinic “was a very bad experience,” that she “was very scared by what that
11 person did,” and that her eyelids have “fallen” as a result of the injection. *Id.* at 4. Plaintiff
12 provides no factual details regarding her claim and fails to identify in her complaint any law or
13 legal theory under which she seeks recovery. *See, generally*, Docket No. 1-1. Her bare assertion,
14 with no factual basis and no explanation as to how those facts constitute a violation of any laws,
15 does not sufficiently state a claim. *See Twombly*, 550 U.S. at 555. *See also Iqbal*, 556 U.S. at 678.

16 Additionally, Chapter 41A of the Nevada Revised Statutes (NRS) governs lawsuits for
17 medical malpractice. NRS § 41A.100, which is Nevada’s statute with respect to claims for medical
18 malpractice, provides, in relevant part:

19 1. Liability for personal injury or death is not imposed
20 upon any provider of health care based on alleged negligence in the
21 performance of that care unless evidence consisting of expert
22 medical testimony,² material from recognized medical texts or
23 treatises or the regulations of the licensed medical facility wherein
24 the alleged negligence occurred is presented to demonstrate the
25 alleged deviation from the accepted standard of care in the specific

25 ¹ Plaintiff also alleges that she currently has no health insurance. Docket No. 1-1 at 4. This
26 claim appears to be untrue based on her attached pay stubs, which show amounts paid for the
27 employee benefit of “Culinary Health & Welfare.” *Id.* at 3-6.

27 ²NRS § 41A.100(2) states that, “[e]xpert medical testimony provided pursuant to
28 subsection 1 may only be given by a provider of health care who practices or has practiced in an
area that is substantially similar to the type of practice engaged in at the time of the alleged
negligence.”

1 circumstances of the case and to prove causation of the alleged
2 personal injury ...

3 Nev. Rev. Stat. Ann. § 41A.100. Plaintiff has not presented the required expert affidavit.

4 For the reasons set forth above, Plaintiff's Complaint is **DISMISSED** without prejudice,
5 with leave to amend. If Plaintiff believes she can correct the deficiencies in her Complaint and
6 chooses to file an Amended Complaint, it should comply with this order and contain not only a
7 showing that this Court has jurisdiction over her claim, but also additional factual information, an
8 explanation as to how those facts constitute a violation of the laws which serve as the basis of her
9 claim, and the required expert affidavit. Further, any Amended Complaint must comply with
10 Fed.R.Civ.P. 8, as discussed above.

11 **III. Conclusion**

12 Accordingly, **IT IS ORDERED** that:

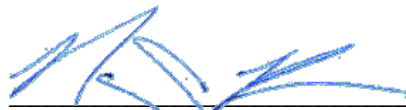
- 13 1. Plaintiff's request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not
14 be required to pay the filing fee.
- 15 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
16 prepayment of any additional fees or costs or the giving of a security therefor. This
17 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance
18 and/or service of subpoenas at government expense.
- 19 3. The Complaint is **DISMISSED** with leave to amend. Plaintiff will have until **April**
20 **29, 2019**, to file an Amended Complaint, if the noted deficiencies can be corrected.
21 If Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court
22 cannot refer to a prior pleading (i.e., the original Complaint) in order to make the
23 Amended Complaint complete. This is because, as a general rule, an Amended
24 Complaint supersedes the original Complaint. Local Rule 15-1(a) requires that an
25 Amended Complaint be complete in itself without reference to any prior pleading.
26 Once a plaintiff files an Amended Complaint, the original Complaint no longer
27 serves any function in the case. Therefore, in an Amended Complaint, as in an
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1 original Complaint, each claim and the involvement of each Defendant must be
2 sufficiently alleged.

3 4. **Failure to comply with this order will result in the recommended dismissal of**
4 **this case.**

5 IT IS SO ORDERED.

6 Dated: March 29, 2019.

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10 NANCY J. KOPPE
11 United States Magistrate Judge
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